

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
Wheeling**

**HENRY CLAY DAVIS,**

Petitioner,

v.

**CIVIL ACTION No. 5:22-CV-163**  
Judge Bailey

**WARDEN NRJ,**

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

The above referenced case is before this Court upon the magistrate judge's recommendation that respondent's Motion to Dismiss be granted and petitioner's 28 U.S.C. § 2254 petition be dismissed without prejudice as to the petitioner's right to renew the same following the proper exhaustion of state remedies.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. ***Thomas v. Arn***, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court level. ***United***


***States v. Schronce***, 727 F.2d 91 (4th Cir. 1984), *cert. denied*, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's report and recommendation.

A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, the magistrate judge's report and recommendation is **ADOPTED**, and petitioner's Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 [Doc. 8] is **DISMISSED WITHOUT PREJUDICE**. Moreover, Respondent's Motion to Dismiss [Doc. 20] is **GRANTED**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** March 7, 2023.

  
JOHN PRESTON BAILEY  
UNITED STATES DISTRICT JUDGE